The House Committee on Health and Human Services offers the following substitute to SB 109:

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to controlled substances, so as to provide for certain requirements relating to the prescribing, dispensing, and administering of medical treatments for the therapeutic purpose of relieving pain; to provide for legislative findings; to provide for definitions; to provide for immunity; to provide for applicability; to provide for notification of health care providers; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to controlled substances, is amended by adding at its end a new article to read as follows:

"ARTICLE 6

16-13-120.

The General Assembly finds that:

(1) Many controlled substances have useful and legitimate medical and scientific purposes and are necessary to maintain the health and general welfare of the people of this state;

(2) The Georgia Supreme Court recognized in State v. McAfee, 259 Ga. 579 (1989) a patient's right to be free from pain and to receive medication to relieve such pain;

(3) Pain management standards established in 2001 by the Joint Commission on Accreditation of Healthcare Organizations state that every patient has a right to have his or her pain assessed and treated;

(4) To appropriately treat a patient's pain, a physician may sometimes be required to administer a controlled substance in excess of the recommended dosage, even if its use

may increase the risk of injury or death, so long as it is not also administered for the purpose of causing injury or death; and

(5) A health care facility or hospice should not unreasonably forbid or restrict the use of controlled substances by a health care provider in a manner in which the health care facility or hospice considers to be appropriate to relieve pain.

16-13-121.

As used in this article, the term:

(1) 'Accepted guideline' means a care or practice guideline for pain management developed by a nationally recognized clinical or professional association, specialty society, accreditation organization, or government sponsored agency that is reasonably relied upon by a significant number of physicians, hospitals, hospices, or clinical experts in the field of pain management and that has developed practice or care guidelines based on original research or on review of existing research and expert opinion. If there are no currently accepted guidelines available, rules, policies, guidelines, or regulations issued by the appropriate regulatory board in accordance with Code Section 16-13-124 may serve the function of such guidelines for purposes of this article.

(2) 'Clinical expert' means an individual who has been regularly engaged in the active practice of pain management and by reason of specialized education, training, and substantial relevant experience has significant professional knowledge regarding current standards, practices, and guidelines in pain management.

(3) 'Disciplinary action' means both informal and formal and both remedial and punitive actions taken by a regulatory board against a health care provider.

(4) 'Health care provider' means:

(A) A physician licensed under Chapter 34 of Title 43;

(B) A registered professional nurse and licensed practical nurse licensed or registered under Chapter 26 of Title 43;

(C) A physician´s assistant licensed under Chapter 34 of Title 43; and

(D) A pharmacist licensed under Chapter 4 of Title 26.

(5) 'Pharmaceutical manufacturer' means an individual, corporation, partnership, or association engaged in the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of any substance or labeling or relabeling of its container and the promotion and marketing of such drugs or devices and also includes the

preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

(6) 'Regulatory board' means the Composite State Board of Medical Examiners, the Georgia Board of Nursing, or the State Board of Pharmacy.

(7) 'Therapeutic purpose' means the use of pharmaceutical and nonpharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management, is administered for the purpose of relieving pain, and is not administered for the purpose of causing iniury or death.

16-13-122.

(a)(1) A health care provider shall be immune from criminal liability and disciplinary action for the prescribing, dispensing, or administering of medical treatment for the therapeutic purpose of relieving pain in accordance with an accepted guideline when his or her actions or failure to act did not deviate from generally accepted standards of pain management practice.

(2) In addition to the immunity provided in paragraph (1) of this subsection, a pharmacist shall be immune from any civil liability for the dispensing or administering of medical treatment for the therapeutic purpose of relieving pain in accordance with an accepted guideline when his or her actions or failure to act did not deviate from generally accepted standards of pain management practice.

(3) A hospital, hospice, or other institution or medical facility defined in Code Section 31-7-1, together with its agents, employees, and independent contractors, shall be immune from civil and criminal liability for their acts or failures to act in relation to the prescribing, dispensing, or administering of medical treatment for pain management ordered by a health care provider.

(4) A pharmaceutical manufacturer shall be immune from civil and criminal liability for the action or actions of a health care provider pursuant to the provisions of this Code section.

(5) For purposes of this Code section, the showing of compliance with an accepted guideline may be rebutted only by clinical expert testimony. A showing that a guideline otherwise qualified to be an accepted guideline is not an accepted guideline because it is inconsistent with the provisions of Code Section 16-13-123 may be made by clinical expert testimony.

(b) In the event that a disciplinary action or criminal prosecution is pursued against a health care provider for his or her actions under this article, the appropriate regulatory board or prosecutor shall produce clinical expert testimony supporting the finding or charge

of violation of disciplinary standards or other legal requirements on the part of the health care provider.

(c) The provisions of this Code section shall apply to health care providers in the treatment of all patients for pain regardless of the patient´s prior or current chemical dependency or addiction. The appropriate regulatory board may develop and issue rules, regulations, policies, or guidelines establishing standards and procedures for the application of this article to the care and treatment of chemically dependent individuals.

16-13-123.

(a) Nothing in this article shall be construed as expanding the authorized scope of practice of any health care provider.

(b) Nothing in this article shall prohibit disciplinary action or prosecution against a health care provider for:

(1) Failing to maintain complete, accurate, and current records documenting the physical examination and medical history of the patient, the basis for the clinical diagnosis of the patient, and the treatment plan for the patient;

(2) Writing false or fictitious prescriptions for controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. Section 801, et seq., or in this chapter;

(3) Prescribing, dispensing, or administering pharmaceuticals in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. Section 801, et seq., or of the laws of this state;

(4) Diverting medications prescribed for a patient to the provider´s own personal use; or

(5) Causing the suicide, euthanasia, or mercy killing of any individual; provided, however, that prescribing, dispensing, or administering medical treatment for pain management in accordance with accepted guidelines for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, shall not be deemed to be causing the suicide, euthanasia, or mercy killing of any individual, so long as such medical treatment is not also administered for the purpose of causing injury or death. In the event a patient commits suicide, a health care provider shall be immune from liability in accordance with paragraph (1) of subsection (a) of Code Section 16-13-122.

16-13-124.

For a guideline to be an accepted guideline for the purposes of this article, it must conform to the intent of this article and must not be inconsistent with the provisions of Code Section 16-13-123. The appropriate regulatory board may by rule or public announcement

published on such board´s website establish that any particular guideline otherwise qualified to be an accepted guideline is not an accepted guideline on the grounds that it is inconsistent with the provisions of Code Section 16-13-123; provided, however, that any guideline that has not been specifically disqualified by such board may still be held not to provide immunity under Code Section 16-13-122 in a particular case on the grounds that it is inconsistent with the provisions of Code Section 16-13-123. Guidelines established primarily for purposes of coverage, payment, or reimbursement do not qualify as accepted guidelines.

16-13-125.

The appropriate regulatory board shall make reasonable efforts to notify health care providers under its jurisdiction of the existence of this article. At a minimum, the regulatory board shall inform any health care provider investigated in relation to the provider´s practices in the management of pain of the existence of this article.

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.